

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

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UNITED STATES OF AMERICA,	:	
	:	
v.	:	Crim. A. No. 20-54-LPS-2
	:	<del>FILED UNDER SEAL</del>
HAYLEY CARELLO,	:	unsealed APR 01 2021
	:	
Defendant.	:	

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MEMORANDUM OPINION

December 30, 2020  
Wilmington, Delaware



**STARK, U.S. District Judge:**

## **I. INTRODUCTION**

The Defendant, Hayley Carello (“Carello” or “Defendant”), is a pretrial detainee awaiting trial on serious drug felonies which carry a statutory mandatory minimum sentence of 10 years incarceration. She alleges that the Federal Detention Center in Philadelphia (“FDC”) is unable to ensure the health and safety of the inmates there from the effects of the coronavirus pandemic, and seeks pretrial release. It is unclear whether Carello requests a reopening of her detention order under 18 U.S.C. § 3142(f)(2), or temporary release due to a “compelling reason” under 18 U.S.C. § 3142(i). Irrespective of which basis Carello’s motion is grounded on, the Court will deny it, for the reasons provided below.

## **II. BACKGROUND**

On June 30, 2020, Carello was charged in a criminal complaint with conspiracy to distribute and possess with intent to distribute 500 grams or more of a mixture and substance containing a detectable amount of methamphetamine, in violation of 21 U.S.C. §§ 841(a)(1) & 846. On July 9, 2020, Magistrate Judge Fallon held a preliminary and detention hearing, after which she ordered Carello detained pending trial. (*See* D.I. 11, D.I. 45 Ex. 1) (“Detention Order” or “Det. Ord.”) On August 25, 2020, Carello and her co-defendant, Imanuel Villalba were indicted on a charge of conspiracy to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a), 841(b)(1)(A), and 846.

On November 13, 2020, Carello filed her pending motion. (D.I. 43) The government filed its opposition brief on November 19 and Carello submitted a reply the same day. (D.I. 45, 46)

### III. LEGAL STANDARDS

Based on the charge pending against Defendant, the law presumes that “no condition or combination of conditions of release will reasonably assure the appearance of the person [i.e., Defendant] as required and the safety of the community.” 18 U.S.C. § 3142(e)(3). It is Defendant’s burden to rebut this presumption. *See United States v. Carbone*, 793 F.2d 559, 560 (3d Cir. 1986).

In evaluating whether to detain a defendant pending trial, the Court is required to consider: (1) the nature and seriousness of the offense charged; (2) the weight of the evidence against the defendant; (3) the defendant’s character, physical and mental condition, family and community ties, past conduct, history relating to drug or alcohol abuse, and criminal history; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant’s release. *See United States v. Delker*, 757 F.2d 1390, 1398-99 (3d Cir. 1985) (citing 18 U.S.C. § 3142(g)) Applying these standards in July 2020, Judge Fallon entered the Detention Order. (Det. Ord.)

Carello’s motion potentially arises under two different provisions of Section 3142. First, 18 U.S.C. § 3142(f)(2)(B) provides that an order of pretrial detention may be reopened any time before trial “if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.” Second, and alternatively, § 3142(i) provides that a Court may order the “temporary release” of a pretrial detainee “to the extent that the judicial officer determines such release to be necessary for preparation of the person’s defense or for another compelling reason.”

#### IV. DISCUSSION

##### A. All Facts Originally Supporting Carello's Detention Still Support Detention

At the conclusion of the detention hearing in July 2020, Judge Fallon ordered Carello detained, finding among other things:

The weight of the evidence is sufficiently strong. . . . [T]aped conversations establish that the Defendant had at least one customer willing to purchase from her multiple pound quantities of methamphetamine. Moreover, it was the Defendant who took possession and control of the "planned delivery" package that she was expecting . . . .

The nature of the drug offense on which the Defendant is charged poses significant concern for the safety of others and the community if the Defendant is released. The deliveries of suspected multiple pound quantities of methamphetamine alleged in the complaint were made to the residence where the Defendant asked to be released. It was the target residence in the investigation. The residence is the home of Defendant's Mother. It is alleged that her Mother is a drug addict and the two often engage in violent physical altercations. Thus, the court is not satisfied that there would not be a danger to others and the community if Defendant returned to a violent and unstable home, that appears to feature prominently in the suspected drug trafficking activities alleged in the Complaint. It was also proffered that Defendant and her boyfriend, the Co-Defendant, are involved in an abusive and unstable relationship to the point where Defendant allegedly threatened to shoot him. Defendant had legal possession of two firearms and ammunition which were discovered following her arrest. Her access to firearms strengthens the presumption for pretrial detention. Defendant's prior arrests demonstrate more of a concern about getting caught in criminal activity rather than a warning flag to follow rules of law and the court is not confident the Defendant would abide by any condition of pretrial release. Moreover, the Defendant's admitted daily marijuana use would impair her judgment such that there is no reasonable expectation she would comply with conditions of release. Furthermore these factors raise concerns about risk of flight.

(Det. Ord. at 3)

All of the factors identified in the Detention Order as supporting pretrial detention continue to support detention. Indeed, as the government (correctly) notes, the “only new information offered by Ms. Carello relates to COVID-19 and conditions at the detention facility.” (D.I. 45 at 9-10) As explained below, that new information does not warrant the relief Carello requests.

**B. No Material New Information Warrants Carello’s Release (§ 3142(f)(2)(B))**

Essentially the sole basis for Carello’s motion is that “there has been a marked increase in the number of COVID-19-related cases at the FDC.” (D.I. 43 at 1)<sup>1</sup> She argues that the FDC previously assured it had “resources and protocols in place to ensure that the virus would not be introduced into the institution” but that assurance is now invalid, meriting release. (*Id.* at 2)

While unfortunate, the number of COVID-19 cases at FDC Philadelphia is not material, new information that bears on whether conditions can be crafted that reasonably assure Carello’s appearance and the safety of other people and the community. The pandemic itself does not change Carello’s criminal history or the evidence that Carello was engaged in dangerous drug-related activity and had access to firearms (and expressed a willingness to use them). It is difficult, in light of that evidence, for new evidence to materially bear on the issue of adequate release conditions. The pandemic is not that type of evidence. *See generally United States v. Roeder*, 2020 WL 1545872, at \*3 n.16 (3d Cir. Apr. 1, 2020) (“[T]he existence of some health risk to every federal prisoner as the result of this global pandemic does not, without more, provide the sole basis for granting release to each and every prisoner within our Circuit.”); *United States v. Raia*, 954 F.3d 594, 597 (3d Cir. Apr. 2, 2020) (“[T]he mere existence of

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<sup>1</sup> As the government notes, without challenge from Defendant, “Ms. Carello has not mentioned, and the government is not aware of, any health conditions that make her more susceptible to contracting COVID-19 than others or increase her risk of developing serious illness were she to contract the virus.” (D.I. 45 at 10)

COVID-19 in society and the possibility that it may spread to a particular prison alone cannot independently justify compassionate release, especially considering BOP's statutory role, and its extensive and professional efforts to curtail the virus's spread.")

Carello's repeated assertions that FDC cannot "ensur[e] the health and safety of the inmate population" (D.I. 43 at 2), that FDC has "unsanitary and life-threatening conditions" (D.I. 46 at 2), and that such conditions would be "a death sentence that Carello faces should she remain incarcerated at the FDC" (*id.*) are not supported by the record. Instead, as the government contends, the record establishes that the Bureau of Prisons' ("BOP") efforts to contain the virus at the FDC have been adequate. (*See, e.g.*, D.I. 45 at 5-7, 11) ("[While the present conditions of restricted social and legal visits and lockdown measures are not optimal . . . they reflect the FDC's ongoing commitment to controlling the impact of COVID-19.") Specifically, while many inmates have tested positive, "most inmates with positive tests have thus far presented as asymptomatic, and no cases have required extraordinary medical interventions or transport outside of the facility." (*Id.* at 7)

Carello further contends that her detention at the FDC is "a dystopian nightmare . . . where she is locked inside her cell 24 hours per day with no running water and no functioning toilets." (D.I. 43 at 2) Even assuming (without deciding) these statements are true,<sup>2</sup> they do not constitute materially new information that alters the Court's conclusion that Carello should remain detained pending trial. Carello's contention that the "awful living conditions . . . will [if she is released] incentivize Carello to comply with all terms and conditions of her pretrial release" (D.I. 46 at 2), is unpersuasive, for reasons including that – as Judge Fallon found –

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<sup>2</sup> The government suggests that the plumbing issues reported in Carello's filings are intermittent and are due to sabotage by inmates. (*See* D.I. 45 at 13 n.9)

Carello's "daily marijuana use would impair her judgment such that there is no reasonable expectation she would comply with conditions of release" (Det. Ord. at 3).

In sum, Carello has not rebutted the presumption that no combination of conditions could reasonably assure her appearance at all further proceedings and the safety of other individuals and the community. No new information having a "material bearing" on that issue has been presented. 18 U.S.C. § 3142(f)(2)(B).

**C. No Compelling Reason Warrants Carello's Release (§ 3142(i))**

To the extent Carello's motion requests temporary release pursuant to 18 U.S.C. § 3142(i), that request fares no better. As the government accurately states, "Ms. Carello's Motion points only to the general increased risks posed by COVID-19." (D.I. 45 at 12) The Court's analysis above with respect to Section 3142(f)(2)(B) applies equally to Section 3142(i). Defendant has not met her burden to show a compelling reason that warrants her temporary release.

**D. Carello Has Failed to Propose a Reasonable Release Plan**

There are additional deficiencies to Carello's Motion. She asks that the Court release her to the custody of her mother or grandmother. The Court agrees with the government that Carello has failed to show that either of them is a proper custodian, or that either of their residences is appropriate. (D.I. 45 at 14; *see also* Det. Ord. at 3 (noting Defendant's mother's house was "violent and unstable home" that "feature[s] prominently in the suspected drug trafficking activities")) Thus, again, the Court will deny Carello's motion.

**V. CONCLUSION**

As Carello argues (and the government acknowledges), there is no doubt that "the concerns raised by COVID-19" are "serious and worthy of consideration." (D.I. 45 at 1) But in

the Court's view, Carello can be safely detained at FDC Philadelphia. Because all of the reasons that supported her detention in July remain supportive of such detention at this time, the Court will deny Carello's motion for pretrial release.

An appropriate order follows.



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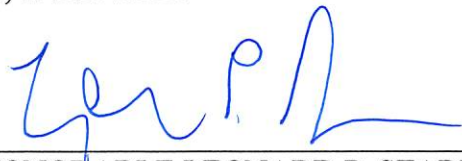
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**ORDER**

At Wilmington this **30th** day of **December, 2020**, for the reasons stated in the Memorandum Opinion issued this same date, **IT IS HEREBY ORDERED** that Defendant Hayley Carello’s Motion for Pretrial Release (D.I. 43) is **DENIED**.




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HONORABLE LEONARD P. STARK  
UNITED STATES DISTRICT JUDGE